

Exhibit 2

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)

5 CUSTOMS AND TAX ADMINISTRATION OF)
6 THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
7 SCHEME LITIGATION)

8 This document relates to case nos.)
19-cv-01783; 19-cv-01788; 19-cv-01794;)
19-cv-01798; 19-cv-01918)
9

10
11
12 C O N F I D E N T I A L

13 SUBJECT TO THE PROTECTIVE ORDER
14
15

16 CONTINUED REMOTE VTC VIDEOTAPED DEPOSITION UNDER
17 ORAL EXAMINATION OF
18 RICHARD MARKOWITZ
19 VOLUME II

20 DATE: April 9, 2021
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23
24

25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 R I C H A R D M A R K O W I T Z,

2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:

4 CONTINUED EXAMINATION BY MR. WEINSTEIN:
5

6 Q Mr. Markowitz, if you can turn to
7 Exhibit 2133, please?

8 Did each of the partnerships listed
9 in this exhibit earn profits from the Danish
10 dividend arbitrage strategy?

11 A (Witness reviewing.)

12 MR. BONGIORNO: Objection.

13 A I don't recall.

14 Q Did the partnerships earn profits
15 from any other investing activity other than
16 the Danish dividend arbitrage strategy?

17 A Yes.

18 Q What other investment strategies
19 did these partnerships earn money from?

20 A Dividend arbitrage investments.

21 Q So their profits were generated
22 entirely by dividend arbitrage strategies?

23 A Yes.

24 Q Did those strategies involve
25 Denmark and Belgium?

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1 Q Was anyone else a participant in
2 that plan?

3 A My wife.

4 Q What prompted you to open a
5 custodial account with Indigo for the Routt
6 Capital plan?

7 A The opportunity was offered to me
8 by my former — by my then to be former
9 partners, Mr. Stein and Mr. Lhote. And it
10 was at a time when there was a business
11 dispute between ourselves and potentially
12 Solo Capital.

13 Q What was that business dispute?

14 A My partners, Mr. Stein and
15 Mr. Lhote, informed me and Mr. Van
16 Merkensteijn in late 2013 or early 2014 that
17 they no longer wanted to work with us as a
18 group or on group investments and projects,
19 and that they had made an investment in a
20 bank in Europe, and that that bank would
21 become a custodian for, among other things,
22 dividend arbitrage strategies, and that they
23 had worked with former Solo employees to
24 establish that platform.

25 Q Was that North Channel Bank?

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1 money from earlier trading in 2015, they've
2 been dormant, as far as investing goes, since
3 2014?

4 A Yes.

5 Q Was -- did you and Mr. Van
6 Merkensteijn intend to continue with the
7 dividend arbitrage strategy without the
8 involvement of your former Argre partners?

9 A Our -- my preference, I can't speak
10 for Mr. Van Merkensteijn, my preference would
11 have been to continue the
12 relationship -- professional relationship we
13 had established with Solo Capital and
14 continue to have investment vehicles invest
15 in that strategy or others with Solo Capital
16 acting as a custodian.

17 That would have been my -- that was
18 my preference.

19 Q Was that done?

20 A Yes.

21 Q What vehicles were used to pursue
22 that strategy of dividend arbitrage using
23 Solo Capital?

24 MR. BONGIORNO: Objection.

25 A Can you repeat the question,

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1 please?

2 Q Yeah. What vehicles were used to
3 pursue that strategy with Solo Capital?

4 A U.S. pension plans.

5 Q Were those new pension plans or the
6 ones you had been using with Argre?

7 MR. BONGIORNO: Objection.

8 A Primarily new plans.

9 Q Can you turn to Exhibit
10 Number 2265?

11 MR. WEINSTEIN: Mark this as 2265.

12 (Whereupon the above mentioned was
13 marked for Identification.)

14 Q That's in the second day's binder.
15 Okay.

16 If you turn to the last page of
17 that e-mail chain, it starts with an e-mail
18 from Peter Wells to you and Mr. Van
19 Merkensteijn.

20 He says, "I wanted to follow up
21 with you both on the status of the additional
22 information regarding the new ex-dividend
23 trades. As you -- we recall, you were going
24 to provide us with, among other things, a
25 list of who is going to be involved in the

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1 Ben-Jacob as attorney in fact and lawful
2 agent to do the things that are listed in
3 this document?

4 A We had been working with
5 Kaye Scholer, Mr. Wells, Mr. Ben-Jacob for a
6 number of years. They were concluded
7 reviewing all of the documentation that we
8 entered into with third parties, review of
9 structures, working with us to develop and
10 implement certain structures.

11 And I was comfortable and confident
12 that providing this power of attorney to
13 Mr. Ben-Jacob in order to fulfill the
14 authorities listed here was a good business
15 and legal decision.

16 Q Was Mr. Ben-Jacob, in effect,
17 substituting for the role that Mr. LaRosa had
18 played with the earlier plans?

19 A No.

20 Q Okay. So among the things which
21 you granted Mr. Ben-Jacob the authority to do
22 was to execute any and all documents and
23 forms related to the organization and
24 establishment of the entities.

25 Did Mr. Ben-Jacob actually perform

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1 that role?

2 A I don't recall.

3 Q Well, did Mr. Ben-Jacob -- well,
4 withdrawn.

5 Did Kaye Scholer assist with the
6 establishment of the new LLCs and pension
7 plans?

8 A Yes.

9 Q Okay. And was that true for all 40
10 of the new LLCs and pension plans?

11 A No.

12 Q And not all of them were new.

13 Is that correct?

14 A Yes.

15 Q Okay. So, of the 40 LLCs and
16 pension plans, for those that were newly
17 established in 2014, did Kaye Scholer assist
18 in establishing them?

19 A Yes.

20 Q Was it your understanding that each
21 of the plan participants for those new
22 pension plans signed a similar limited power
23 of attorney granting Mr. Ben-Jacob the power
24 to do the same things?

25 A I don't recall.

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1 Q Okay. Item 2 is "execute any and
2 all forms and documents with the financial
3 institutions that shall be necessary to
4 establish bank, investment, security, and
5 custody accounts," and then it goes on.

6 Did Kaye Scholer perform that
7 service on behalf of the newly established
8 pension plans?

9 A I don't recall.

10 Q Okay. Do you recall if
11 Kaye Scholer helped with the onboarding
12 process that any of the custodians used for
13 the trading going forward?

14 A Yes.

15 Q What did they do to assist with the
16 onboarding process?

17 A They worked with the legal and
18 compliance teams at Old Park Lane or Solo,
19 reviewed documents on our behalf. And, in
20 some points, it filled out documents for our
21 review, completed the documentation process.

22 Q Okay. Did Kaye Scholer assist in
23 onboarding with brokers?

24 A Yes.

25 Q The similar kind of assistance that

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1 you just described for the custodians?

2 A Yes.

3 Q Item 3 says, "Execute any and all
4 forward sales contracts, security lending
5 agreements, guarantee deeds, custody
6 agreements, tax reclaim agreements, and any
7 such other related documents in connection
8 with the transactions."

9 Did Kaye Scholer perform that
10 service?

11 A I don't recall.

12 MR. BONGIORNO: Yeah, we couldn't
13 hear that last question, but we know you
14 were reading from Item 3, so it's just
15 assumed that you obviously have probably
16 read it from the document. But we
17 couldn't hear it at all.

18 MR. WEINSTEIN: Okay.

19 Q For this group of 40 pension plans,
20 did the dividend arbitrage strategy include
21 the execution of forward sales contracts?

22 A Yes.

23 Q Okay. And was the forward sale
24 contract a part of each and every transaction
25 for the dividend arbitrage strategy?

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1 A In which time frame?

2 Q Now I'm just focused on the trading
3 done by the 40 plans.

4 A Yes.

5 Q Did Kaye Scholer assist at all with
6 respect to the forward sales contracts that
7 were entered into by the 40 pension plans?

8 A Yes.

9 Q How did they assist with that?

10 A They received and reviewed the
11 documentation, and advised us, if necessary,
12 on the terms of those agreements.

13 Q For each purchase of Danish
14 securities by any of the 40 pension plans,
15 was there an associated securities lending
16 agreement for the shares?

17 A No.

18 Q Okay. Did the dividend arbitrage
19 strategy regarding Denmark work the same way
20 for these 40 pension plans as it did for the
21 plans involved with the Argre group?

22 A No.

23 Q How did it differ?

24 A There were different participants,
25 there was a different fee arrangement, and

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1 Solo Capital developed an automated trading
2 algorithm that their customers could take
3 advantage of and use to assist with the
4 execution and implementation of trading
5 strategies.

6 Q Okay. I want to just focus on the
7 transactions that were executed as part of
8 the dividend arbitrage strategy when the 40
9 plans were involved.

10 Was there always -- there was a
11 purchase of Danish shares.

12 Would that be right?

13 A Yes, yes.

14 Q Okay. Was there a -- at the same
15 time, would the plan enter into a hedging
16 forward contract?

17 A Yes.

18 Q Okay. And by the settlement date
19 for the purchase of the shares, would the
20 plan enter into a stock lending agreement in
21 which it loaned the shares in exchange for
22 money?

23 A No.

24 Q Okay. And during that period of
25 time, how did the 40 pension plans purchase

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1 the stock?

2 A They lent stock and in return
3 received cash collateral.

4 Q Okay. And so, on each occasion
5 that one of the 40 pension plans purchased
6 Danish stock, it also lent that stock out in
7 exchange for cash collateral.

8 Is that right?

9 A Yes.

10 Q And the cash collateral in each
11 case was used to purchase the stock?

12 A In addition to other assets that
13 the pension plan had in its custody account
14 or received in its custody account.

15 Q Okay. Was it true that in each
16 case in which it entered into that stock
17 lending agreement, the cash collateral that
18 it received in return for lending the stock
19 was the same amount as the purchase price of
20 the securities?

21 A The amounts were equal, yes.

22 Q Did Kaye Scholer assist in
23 connection with the securities lending
24 transactions that you've just described?

25 A They reviewed the master securities

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1 lending agreements, provided advice, assisted
2 in negotiating terms to finalize those
3 agreements.

4 Q Okay. There's a reference in
5 Number 3 to "tax reclaim agreements."

6 Are those the agreements with the
7 payment agents?

8 A Yes.

9 Q Okay. And did Kaye Scholer assist
10 with respect to that aspect of the strategy?

11 A As our lawyers, they reviewed the
12 documentation and provided us with advice and
13 counsel on those documents.

14 Q Is there any aspect of the trading
15 that was done by the 40 pension plans as part
16 of the dividend arbitrage strategy that
17 Kaye Scholer was not aware of?

18 MR. BONGIORNO: Objection.

19 A We provided them all the
20 information they needed, answered any
21 questions they had. With respect to actual
22 trades that occurred, I don't believe we sent
23 them information about each and every trade.

24 So the answer to your question is
25 no, they were not involved in every aspect.